

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Amendment of Part 22 of the Commission's )  
Rules to Benefit the Consumers of Air-Ground ) WT Docket No. 03-103  
Telecommunications Services )  
 )  
Biennial Regulatory Review – Amendment of )  
Parts 1, 22, and 90 of the Commission's Rules )

To: The Commission

**COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

The American Mobile Telecommunications Industry Association, Inc. (“AMTA” or “Association”), pursuant to Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1</sup> As detailed below, AMTA supports the FCC’s efforts to streamline its Part 22 rules and thereby enhance the more flexible use of the radio spectrum authorized thereunder. The Association tentatively endorses the Commission’s reexamination of its rules governing the commercial air-ground service, conditioned on the agency first reaching a determination on the 800 MHz public safety interference issue.<sup>2</sup> Further, either as part of the commercial air-ground service investigation or in a further notice in this proceeding, AMTA recommends that the FCC expand its review to include the general aviation air-ground service.

**I. INTRODUCTION**

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association’s members include trunked and

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<sup>1</sup> *Notice of Proposed Rule Making*, WT Docket No. 03-103, FCC 03-95 (rel. Apr. 28, 2003) (“Notice” or “NPR”).

<sup>2</sup> *See Notice of Proposed Rule Making*, WT Docket No. 02-55, 17 FCC Rcd 4873 (2002) (“800 MHz Proceeding”).

conventional 800 MHz and 900 MHz operators, licensees of wide-area Specialized Mobile Radio (“SMR”) systems, and commercial licensees in the 216-222 MHz and 150-512 MHz bands. A number of the Association’s members were successful bidders in the FCC’s recent Auction Nos. 40 and 48 in which the geographic rights to certain Part 22 paging channels were auctioned. Additionally, many of them and their customers operate in the 450 MHz and 800 MHz spectrum immediately adjacent, respectively, to the general aviation air-ground spectrum and commercial air-ground spectrum under consideration herein. Thus, the Association and its members have a substantial, direct interest in the outcome of this proceeding.

## **II. BACKGROUND**

This proceeding, like many others initiated by the Commission in recent years, is an outgrowth of the agency’s biennial review process.<sup>3</sup> As the result of conducting a statutorily mandated reexamination of its Part 22 regulations,<sup>4</sup> the Commission tentatively has concluded that certain Part 22 regulations should be modified or deleted and that the commercial air-ground rules should be revised to permit the more efficient, competitive provision of service to the public.

AMTA agrees that regulation of the spectrum at issue herein, indeed all spectrum, should promote its efficient, publicly beneficial use. It had submitted suggested rule changes in response to the Part 22 Review Public Notice, a number of which have been included in the instant NPR. The Association also concurs with the Commission’s assessment that marketplace developments call into question whether the existing commercial air-ground service rules

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<sup>3</sup> See 47 U.S.C. § 161.

<sup>4</sup> See, e.g., The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau, *Public Notice*, FCC 02-264 (rel. Sept. 26, 2002) (“Part 22 Review”).

promote “effective consumer choice and efficient spectrum use.”<sup>5</sup> The Association nonetheless cautions the FCC that any wholesale revision of these rules should be deferred until a determination has been made in the 800 MHz proceeding when the agency will be in a position to evaluate the technical compatibility of these adjacent allocations. Additionally, as detailed *infra*, AMTA urges the FCC to conduct a comparable evaluation of the general aviation air-ground service rules to ensure that they also permit valuable spectrum to be used intensively to serve the needs of the public.

### **III. THE PART 22 RULES UNDER CONSIDERATION SHOULD BE REVISED TO PERMIT MORE FLEXIBLE SPECTRUM USE.**

The Part 22 rules under consideration herein are ripe for review. The regulatory framework for these services are vestiges of an earlier spectrum management approach in which the Commission narrowly defined the services that could be provided on discrete sub-groups of channels and established detailed technical and operational parameters within which those services could be offered. By contrast, in recent years, the FCC has adopted a more expansive regulatory perspective, one focused on promoting competitive options and limiting regulatory oversight to the minimum necessary.

This paradigm shift was accelerated by the 1993 Congressional adoption of a Commercial Mobile Radio Service (“CMRS”) versus Private Mobile Radio Service (“PMRS”) distinction in the wireless services.<sup>6</sup> This delineation has triggered a series of rule makings, all with the goal of satisfying the statutory mandate that the FCC rules establish regulatory symmetry among similar services.<sup>7</sup> That same objective supports the rule changes proposed in

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<sup>5</sup> NPR at ¶ 3.

<sup>6</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

<sup>7</sup> See, e.g., *Memorandum Opinion and Order and Order on Reconsideration*, GN Docket No. 93-252, 15 FCC Rcd 6341 (2000), its predecessors and its progeny.

the instant Notice and, in AMTA's opinion, a further investigation of the general aviation air-ground service rules.

A. Commercial Air-Ground Service

The Notice details a number of marketplace developments that warrant review of the rules governing this service. Designed to satisfy a niche user market and laboring under distinct technical limitations, it cannot be deemed a success with only one of six potential operators providing service. The quality and cost of the offering has suffered in comparison to the now ubiquitous cellular service. Although the use of cellular phones and numerous other wireless devices still is prohibited while in flight, the public increasingly has rejected the air-ground service in favor of waiting to land or surreptitiously using their cell phones or PADs. Should the RTCA ease or remove this restriction in its upcoming report on the risks associated with the use of wireless devices while in flight, commercial air-ground usage might disappear entirely.<sup>8</sup>

The record is clear that this service should be reexamined and likely revised significantly. However, AMTA urges the FCC to delay any further consideration of this matter until it has addressed the complex 800 MHz public safety interference problem that presumably is becoming ripe for decision. As noted in the NPR, the commercial air-ground spectrum is immediately adjacent to the lower portion of the 800 MHz band, spectrum that already is used by numerous public safety entities and that, under certain proposals, would become the home of regional public safety plans. It is essential that the FCC take no action herein that would curtail the options available to it in the 800 MHz proceeding. In particular, there should be no changes in the technical parameters of this service, including adding a terrestrial component, unless and until it can be determined conclusively that the modifications would have no interference potential for 800 MHz users.

B. General Aviation Air-Ground Service

As part of this comprehensive Part 22 review, AMTA urges the FCC to examine the general aviation air-ground service and determine whether the needs of intended users are being or could be better served by alternative offerings and whether the spectrum assigned to it could be used more effectively for other purposes.<sup>9</sup> The Association fully appreciates the importance of communications to the general aviation community. Although the frequencies allocated for this service are distinct from the aviation spectrum assigned as the primary communications channels between general aviation aircraft and those on the ground, it undoubtedly is useful for pilots to have access to the public switched network both for aircraft-related and personal messages.

It is unclear, however, to what extent this particular spectrum continues to fulfill that function. As noted in the NPR, AirCell, Inc. already provides air-ground services to general aviation aircraft using traditional cellular networks and frequencies.<sup>10</sup> Its service undoubtedly offers both greater capacity and more sophisticated technology than available on traditional general aviation air-ground systems. As that offering grows, and in the event the RTCA determines to permit the use of wireless devices on aircraft generally, the need for this allocation will become increasingly questionable.

Given that probability, AMTA recommends that the FCC reconsider whether air-ground service is the best use of this spectrum. Currently, the dozen or so 450 MHz channels assigned to this general aviation service have an 800 kilometers (497 mile) co-channel separation requirement. They cannot be reassigned at closer distances because of potential interference

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<sup>8</sup> NPR at ¶ 11.

<sup>9</sup> See 47 C.F.R. § 22.805 *et seq.*

<sup>10</sup> NPR at ¶ 15. Indeed there are some reports that pilots and crew on general aviation aircraft are not always adverse to using their cell phones while in flight without use of AirCell's system.

from airborne mobile units. By contrast, even exclusive trunked 450 MHz channels in the Part 90 services typically are assigned at distances close to 50 miles. This obviously results in spectrum utilization several hundred times greater than can be achieved in the air-ground service. As spectrum becomes increasingly scarce, particularly in major urban areas, it is imperative that the FCC weigh whether its allocations promote the most publicly beneficial use of this finite resource. AMTA urges the Commission to investigate current and projected general aviation air-ground spectrum utilization and determine whether this allocation satisfies that standard. If not, the remaining air-ground usage should be shifted to AirCell's system and this spectrum made available through a competitive bidding process to all qualified entities under a flexible regulatory scheme.

C. Paging and One-Way/Two-Way Mobile Operation

The Association supports the changes initially recommended by AMTA and others to revise the Part 22 rules and permit a flexible regulatory structure comparable to that extant in other services. Given the interest in this spectrum from PMRS telecommunications carriers and private internal operators as evidenced in the recent Auctions 40 and 48, it is appropriate for the FCC to remove the current eligibility restrictions codified in Sections 22.1, 22.7 and other FCC rule provisions and to clarify that certain regulations, such as the additional channel policies set out in Sections 22.539 and 22.569 are not applicable to auctioned spectrum.

AMTA also endorses the elimination of various restrictions on the provision of dispatch service, restrictions that are the residue of a long-abandoned regulatory scheme that bifurcated dispatch from mobile telephone service. It is apparent that this distinction is no longer applicable in today's cellular/PCS marketplace in which multiple operators now advertise combined cellular and dispatch offerings. It should not restrict the use to which parties operating on other Part 22

channels wish to put their spectrum. The Association reaffirms its previous position that the restrictions in Section 22.577 serve no useful technical, operational or competitive purpose, and urges the FCC to eliminate them. Similarly, AMTA recommends that the power limitation on dispatch transmitters in Section 22.565(g) be deleted.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS  
ASSOCIATION, INC.

By: \_\_\_\_\_/s/  
Alan R. Shark, President  
200 N. Glebe Road, Suite 1000  
Arlington, VA 22203

Of Counsel:  
Elizabeth R. Sachs, Esq.  
Lukas, Nace, Gutierrez & Sachs, Chartered  
1111 19th Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 857-3500

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